Document #5408

6/27/91

DOCUMENT NO. 5408
ADOPTED 6/27/91

LICENSE AGREEMENT

BY AND BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

MASSACHUSETTS BEIRUT MEMORIAL COMMITTEE

This Agreement (the "Agreement") is made as of the ___ day of _____, 1991, by and between the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate, created and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, and having a principal place of business of One City Hall Square, Boston, Massachusetts 02201 (hereinafter variously referred to as the "BRA" and the "Licensor"), and the **MASSACHUSETTS BEIRUT MEMORIAL COMMITTEE**, with a mailing address of P.O. Box 83, Westood, Massachusetts 02090 (hereinafter referred to as the "Licensee").

WHEREAS, the Licensor has title to Waterfront Park as set forth in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Waterfront Park");

WHEREAS, Licensee desires to cause to be constructed a Massachusetts Beirut Memorial in Waterfront Park on the Massachusetts Beirut Memorial Site as more fully set forth in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "License Area");

WHEREAS, the BRA Board authorized the Director to execute and deliver a License Agreement with the Licensee for the entry of the Massachusetts Beirut Memorial Site for the purpose of the construction of the Massachusetts Beirut Memorial;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the Licensor authorizes and permits the Licensee, its agents, employees, contractors and subcontractors, to enter upon the License Area for the purpose of the construction of the Massachusetts Beirut Memorial on the License Area and the parties hereto agree as follows:

1. This Agreement shall commence from the date hereof and continue in force and effect until terminated by the earlier of either (a) notice at any time for cause (as hereinafter defined) from the Licensor which shall state the date of termination and the Licensee shall vacate the License Area by said date or (b) the completion of the construction of the Massachusetts Beirut Memorial. Notwithstanding such termination, the Licensee shall remain liable for all obligations and damages theretofore accrued by it hereunder during the term of the Agreement and the damages resulting from the obligations of the Licensee under Paragraphs 3, 4, 5, 14, 15, 16 and 18 during the term of this Agreement, but otherwise the Licensee's obligations shall not survive termination. For purposes of this Paragraph, the term "for cause" shall mean failure by the Licensee, on a timely basis, to comply with the terms and conditions of this Agreement.

2. The Licensor shall make available the License Area in its then condition, "as is," it being agreed that, during the period of this Agreement, the Licensee shall have the opportunity to examine the same in all respects. The

Licensor has made no representations or warranties of any kind with respect to such condition and it shall have no obligation to do any work on or with respect to the License Area.

3. The Licensee immediately after submission to the Licensor of the evidence of insurance required by Section 16 shall be authorized to enter and inspect the License Area and commence the construction of the Massachusetts Beirut Memorial.

4. The Licensee covenants that it will not occupy or use the License Area, nor allow it to be occupied or used for any purposes other than those enumerated herein, nor in any way to occupy or use the License Area, nor allow it to be occupied or used in a manner contrary to any law of the Commonwealth or to any ordinance or by-law of the City of Boston.

5. a. The License Area shall be used for the construction of the Massachusetts Beirut Memorial, to be built in accordance with the Final Working Drawings and Specifications. For purposes of this section, "Final Working Drawings and Specifications" shall mean complete working drawings and specifications, including such drawings and specifications and samples of materials as have been approved by the Licensor and which are incorporated herein by reference and made a

part hereof.

b. The Licensee shall not apply for a building permit for the construction of the Massachusetts Beirut Memorial to be erected on the License Area without the prior certification of the Licensor that the work to be done or completed as set forth in the permit application is in accordance with the Final Working Drawings and Specifications approved by the Authority. No work shall be done on the construction of the Massachusetts Beirut Memorial to be erected on the License Area unless such work conforms in every respect with such approved Final Working Drawings and Specifications, except and only to the extent that modifications thereof have been requested by the Licensee in writing and have been approved in writing by the Licensor.

It is agreed that any and all Change Orders issued and implemented subsequent to approval by the Licensor of Final Working Drawings and Specifications constitute a deviation from said approved Final Working Drawings and Specifications. The Licensee agrees that no such Change Order will be issued or implemented unless such Change Order shall have been submitted to and approved in writing by the Licensor prior to its issuance or implementation.

In the event the Licensee shall fail to comply with

the foregoing requirements, the Licensor may, within a reasonable time after discovery thereof by the Licensor, direct in writing that the Licensee so modify or reconstruct such portion or portions of the Massachusetts Beirut Memorial erected or being erected on the License Area as are not in conformance with the approved Final Working Drawings and Specifications or any approved modifications thereof, or Change Order therefor as to bring them into conformance therewith. The Licensee shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the Licensor may enforce the provisions of this subsection 5b. by an action in a court of appropriate jurisdiction to compel specific performance.

c. In submitting all plans and specifications to the Licensor for its approval, the Licensee shall consider and take into account the planning and design objectives of the Licensor, and the Licensor shall pursue such objectives in its review of and action upon the plans and specifications so submitted.

d. The Licensee shall not discharge the Architect without cause or hire new or additional architects or alter or amend the contract for architectural services between the Architect and the Licensee without in each instance obtaining the prior written consent of the Licensor.

All HUD requirements concerning the employment and services of architects shall also be observed. For purposes of this subsection d., "Architect" shall mean the firm Walker Kluesing Design Group, acting pursuant to a contract for architectural services with respect to the Massachusetts Beirut Memorial to be erected on the License Area, a copy of which contract has been deposited with the Licensor, or such firm or contract as shall be substituted by the Licensee with the prior written consent of the Licensor.

e. No sign shall be erected or placed on the License Area unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the Licensor in writing.

6. a. The Licensee shall begin the construction of the Massachusetts Beirut Memorial on the License Area in accordance with the approved Final Working Drawings and Specifications no later than December 31, 1992 or as may be extended with the permission of the Licensor.

b. The Licensee shall diligently prosecute to completion the construction of the Massachusetts Beirut Memorial on the License Area and shall complete such construction not later than December 31, 1993 or as may be extended with the permission of the Licensor.

c. The Licensee shall submit to the Licensor for its approval a detailed estimated progress schedule at the time construction is begun in a format generally used in construction. This schedule shall be resubmitted each month until the construction of the Massachusetts Beirut Memorial has been completed, with actual progress shown in each submission. This monthly submission shall be accompanied by a written report by the Licensee citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts which shall be reasonably satisfactory to the Licensor.

7. The construction of the Massachusetts Beirut Memorial on the License Area shall be deemed completed for the purposes of this Agreement when the Massachusetts Beirut Memorial required of the Licensee by the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof, has been constructed and shall incontestably be deemed completed for the purposes of this Agreement upon the issuance of a Certificate of Completion by the Licensor.

Promptly after completion of the Improvements in accordance with the provisions of this Agreement, the Licensor will furnish the Licensee with an appropriate instrument for so certifying. Such certification by the Licensor shall be, and it shall be so provided in the certification itself, a

conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Licensee and its successors and assigns, to construct the Massachusetts Beirut Memorial.

The Licensee agrees that the Licensor shall be under no obligation to issue a Certificate of Completion until such time as the Licensor has had a reasonable opportunity to inspect the Massachusetts Beirut Memorial constructed pursuant to the provisions of this Agreement, the approved Final Working Drawings and Specifications, and any approved modifications thereof, provided, however, that the Licensor shall not be required to make an inspection hereunder unless the Licensee has requested in writing that the Licensor issue a Certificate of Completion.

8. The Licensee, for itself, its successors and assigns, agrees that in the construction of the Massachusetts Beirut Memorial in accordance with the provisions of this Agreement:

   a. The Licensee will not discriminate against any employee or applicant for employment because of race, color, sex, religion or national origin. The Licensee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following:

employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Licensor setting forth the provisions of this non-discrimination clause.

b. The Licensee will, in all solicitations or advertisements for employees placed by or on behalf of the Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Licensee will send to each labor union or representative of workers with which the Licensee has a collective bargaining agreement or other contract of understanding, a notice, to be provided advising the said labor union or worker's representative of the Licensee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Licensee will comply with all provisions of

Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The Licensee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of the U.S. Department of Labor, or the Secretary of the U.S. Department of Housing and Urban Development pursuant thereto, and will permit access to the Licensee's books, records, and accounts by the Licensor, the Secretary of the U.S. Department of Housing and Urban Development, and the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the Licensee's noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Licensee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and such

other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

g. The Licensee will include the provisions of subsections a. through d. of this Section in every employment contract, whether union or nonunion, and in every other contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of his contractors, unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. The Licensee will take such action with respect to any construction contract, subcontract, or purchase order as the Licensor or the U.S. Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Licensee becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Licensor or the U.S.

Department of Housing and Urban Development, the Licensee may request the United States to enter into such litigation to protect the interest of the United States.

For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read: "During the performance of this Contract, the Contractor/ Subcontractor/Vendor agrees as follows:" and the term "Licensee" as it appears throughout this Section shall be changed to "Contractor", "Subcontractor", or "Vendor", as the case may be.

9. The Licensee agrees to assume all maintenance expenses incurred by the Licensee from and after the date hereof during the term of this License Agreement as set forth in Paragraph 1 above, including sewer and water charges, and the Licensee will have complete responsibilities for compliance with all laws and municipal codes and ordinances. The Licensee shall pay directly to the proper persons or authorities when due all charges with respect to the License Area incurred by the Licensee from and after the date hereof, whether called charges, taxes, assessments, fees, or otherwise, for utility services, water and sewer use, taxes, betterment assessment, and other charges. The Licensee shall not create, permit or suffer to be created by any

agent of the Licensee within its control or allow to remain, any lien, encumbrance or other charge upon the License Area or any part thereof.

10. During the term of this Agreement, the Licensee shall be solely responsible for all maintenance, security, and other services required to keep any and all portions of the License Area on which work is being conducted pursuant to this Agreement in good and safe condition and repair. All fixtures, effects, equipment, and property of any kind of the Licensee, and of all persons claiming through or under the Licensee, shall be at the sole risk of the Licensee or such persons claiming through or under the Licensee.

11. At all times during the term of this License, the Licensee shall permit the Licensor, or its designated representative, access to the License Area. The Licensee shall also provide such representative the opportunity to review all contract documents and change orders and shall obtain the prior approval of such representative of all future change orders.

12. The Licensee, after completion of the work referred to in Sections 3 and 5 above, shall periodically inspect the License Area to ascertain its then condition and keep the Licensor fully and currently advised of such condition or any changes therein.

13. The Licensee agrees to undertake reasonable measures to

secure any and all portions of the License Area on which work is being conducted pursuant to this Agreement in order to prevent unauthorized entry, including but not limited to installing barriers or locks on all entrances and exits and placing appropriate barriers at all excavations or other measures satisfactory to the Licensor, in its reasonable discretion.

14. The Licensee agrees that all work undertaken by it for or with respect to the License Area or any part thereof and the measures undertaken to secure the License Area shall be at its sole cost and expense without liability to the Licensor and that any work undertaken on the License Area shall be undertaken in compliance with all applicable laws and regulations, and that the Licensee shall have the responsibility to secure all required permits and approvals for such work.

15. The Licensee hereby agrees to defend, indemnify and hold harmless the Licensor, its members, officers and employees from and against all actions, claims, costs, fees, expenses, liabilities and damages (including attorneys fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as a result of any activities undertaken by or for the Licensee in its implementation of this Agreement or its work with respect to the License Area. The Licensor shall give notice to the Licensee of any such actions, claims, costs, fees, expenses,

liabilities or damages.

16. a. Before entering the License Area or commencing work the Licensee shall submit certificates of insurance evidencing its Public Liability Insurance to the Licensor or such other evidence of insurance as required by Licensor in its reasonable discretion. In addition, it shall submit its contractor's certificates of insurance evidencing its Worker's Compensation Insurance and its Public Liability Insurance before such contractor commences work. Such insurance shall be carried with financially responsible insurance companies, licensed in the State and shall be kept in force until the Licensee's work under this Agreement is completed or the Agreement is terminated by its terms. Certificates of Insurance (covering all operations under this Agreement) which expire before the Licensee's work under this Agreement is completed shall be renewed. Failure to maintain the insurance coverage required hereunder shall be a breach of this Agreement and the Licensor shall have the right in addition to any other remedy to terminate this Agreement and revoke the final designation. The Licensor shall be named as an additional insured on such policies. For purposes of this Paragraph the term "evidence of insurance" shall mean certificates of insurance where the Licensor is named as the certificate holder.

b. The Licensee shall require that the contractor engaged in work at the License Area carry Worker's Compensation Insurance for all its employees and those of its contractors and/or subcontractors engaged in work at the License Area, in accordance with the State Worker's Compensation Laws. The Licensee shall give written or printed notice to all persons under contract of hire with it and to every person with whom it is about to enter into a contract of hire, that it has provided for payment to injured employees by insuring as provided under Chapter 152 of the Massachusetts General Laws. The foregoing shall also apply to contractors and subcontractors. The form of notice to be posted is prescribed by the Department of Industrial Accidents of the Commonwealth of Massachusetts.

c. The Licensee may carry and shall require that there be carried, during the term of this Agreement, Comprehensive Public Liability Insurance with a combined single limit of One Million ($1,000,000) Dollars per occurrence, for personal and bodily injury, death and property damage, and an "umbrella liability" policy, so called, with a limit of Five Million ($5,000,000) Dollars per occurrence, to protect the Licensee and its contractors or subcontractors against claims due to accidents which may occur or result from operations under this Agreement. Such insurance shall cover the use of all equipment, hoists, motor vehicles

or hauling materials or debris from the same. The Licensor shall be named as an additional insured on all such policies for such insurance, and the Licensee shall furnish a certificate of such insurance to the Licensor prior to taking occupancy of the License Area.

d. The Licensee shall carry, during the term of this Agreement, Comprehensive Property Damage Insurance or Builder's Risk Insurance providing for a combined single limit of One Million ($1,000,000) Dollars for all damages arising out of injury to or destruction of property. The Licensor shall be named as an additional insured on such policy.

17. The Licensee agrees that upon termination of this Agreement for cause in accordance with Paragraph 1 hereof, it shall vacate the property by the termination date specified in such notice and remove all rubbish, debris and non-indigenous material which was placed thereon by said Licensee or its contractors and/or subcontractors during the period hereof, and shall restore or remedy any damage to the License Area resulting from work thereon.

18. The Licensee shall not discriminate in its hiring practices nor will it allow any of its employees, agents, contractors and/or subcontractors to discriminate upon the basis of race, color, sex, religion or national origin in regard to its activities and work required hereunder.

19. For the purposes of any of the provisions of this Agreement, neither the Licensor nor the Licensee, as the case may be, shall be considered in breach of or in default in its obligations with respect to the obligations set forth in this Agreement, in the event of an unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, litigation and appeals therefrom, acts of God or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations shall be extended for the period of the enforced delay; provided that the party seeking the benefit of the provisions of this Section shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requesting an extension for the period of the enforced delay.

20. a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the

conditions applicable to each of them.

b. The waiver by the Licensor or any breach of any term or condition herein contained shall not be deemed to be a waiver or any subsequent breach of the same or any other term or condition herein contained.

c. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

d. No member, officer or employee of the Licensor shall be personally liable to the Licensee in the event of any default or breach by the Licensor or for any amount which may become due to the Licensee or on any obligation under the terms of this Agreement.

e. Whenever under this Agreement, notices, approvals, submittals, satisfactions, requests or waivers are required or permitted the same shall be effective and valid only when given in writing signed by a duly authorized officer or person of the respective parties.

Any notice, approval, submittal, satisfaction, request or waiver required or desired to be given pursuant to this Agreement, shall be in writing and shall be personally served or, in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If addressed to the Licensor, its address is:

Stephen Coyle, Director
Boston Redevelopment Authority
1 City Hall Square/9th Floor
Boston, Massachusetts 02201

with a copy to:

Boston Redevelopment Authority
1 City Hall Square/9th Floor
Boston, Massachusetts 02201
Attention: Chief General Counsel

and if addressed to the Licensee, its address is:

Massachusetts Beirut Memorial Committee
P.O. Box 83
Westwood, Massachusetts 02090

Either party may change its respective address by giving written notice to the other in accordance with the provisions hereof.

f. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture. The Licensee shall be deemed independent and the agents of the Licensee shall be subject to the full direction and control of the Licensee. Furthermore, nothing within

this Agreement shall be construed, implied or inferred to create an agency relationship between the Licensor and Licensee.

g. In its discretion, the Licensor may waive conditions herein contained to be performed by the Licensee for its benefit.

h. The Licensee may not assign any of its rights or obligations hereunder without the prior approval of the Licensor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered as of the date first above written.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

MASSACHUSETTS BEIRUT MEMORIAL COMMITTEE

By: B. Christine Donlan

APPROVED AS TO FORM:

_____
Robert F. McNeil
Chief General Counsel
Boston Redevelopment Authority

MEMORANDUM JUNE 27, 1991

TO: BOSTON REDEVELOPMENT AUTHORITY and
STEPHEN COYLE, DIRECTOR

FROM: HOMER RUSSELL, ASSISTANT DIRECTOR OF URBAN DESIGN AND DEVELOPMENT
SHIRLEY MUIRHEAD, DIRECTOR OF LANDSCAPE DESIGN
PATRICE TODISCO, LANDSCAPE ARCHITECT

SUBJECT: AUTHORIZATION TO ENTER INTO A TEMPORARY LICENSE AGREEMENT WITH THE MASSACHUSETTS BEIRUT MEMORIAL COMMITTEE FOR THE PURPOSE OF CONSTRUCTING A MEMORIAL AT WATERFRONT PARK.

SUMMARY: This memorandum requests authorization for the Director to execute a temporary License Agreement with the Massachusetts Beirut Memorial Committee to enter a portion of Waterfront Park for the purpose of constructing a Massachusetts Beirut Memorial.

The Massachusetts Beirut Memorial Committee has requested that a temporary License Agreement with the Boston Redevelopment Authority be executed to allow them to proceed with construction on the Massachusetts Beirut Memorial to be built on the Authority's property at Waterfront Park.

On October 23, 1983, 261 U.S. Marines were killed in Beirut, Lebanon in an early morning surprise attack. Since then, a memorial was dedicated in North Carolina at the home base for the Marine Corps unit and each state that lost native sons has established a memorial. The memorial planned for Waterfront Park would honor the nine Massachusetts Marines killed in the attack.

A section of Waterfront Park, where Atlantic Avenue becomes Commercial Street, has been dedicated as the site for this memorial. On Tuesday, October 23, 1990, a groundbreaking was held on this site. At that time, State Chairperson Christine Devlin, who lost her son Michael during the attack, commented: ". . . the cooperation that we received from Mayor Flynn, the Boston Redevelopment Authority, the Mayor's Office of Arts and Humanities, the Boston Arts Commission, as well as the other various City departments will be long remembered by the families who lost loved ones in Lebanon."

The funds for the construction of the memorial have been raised by the Committee.

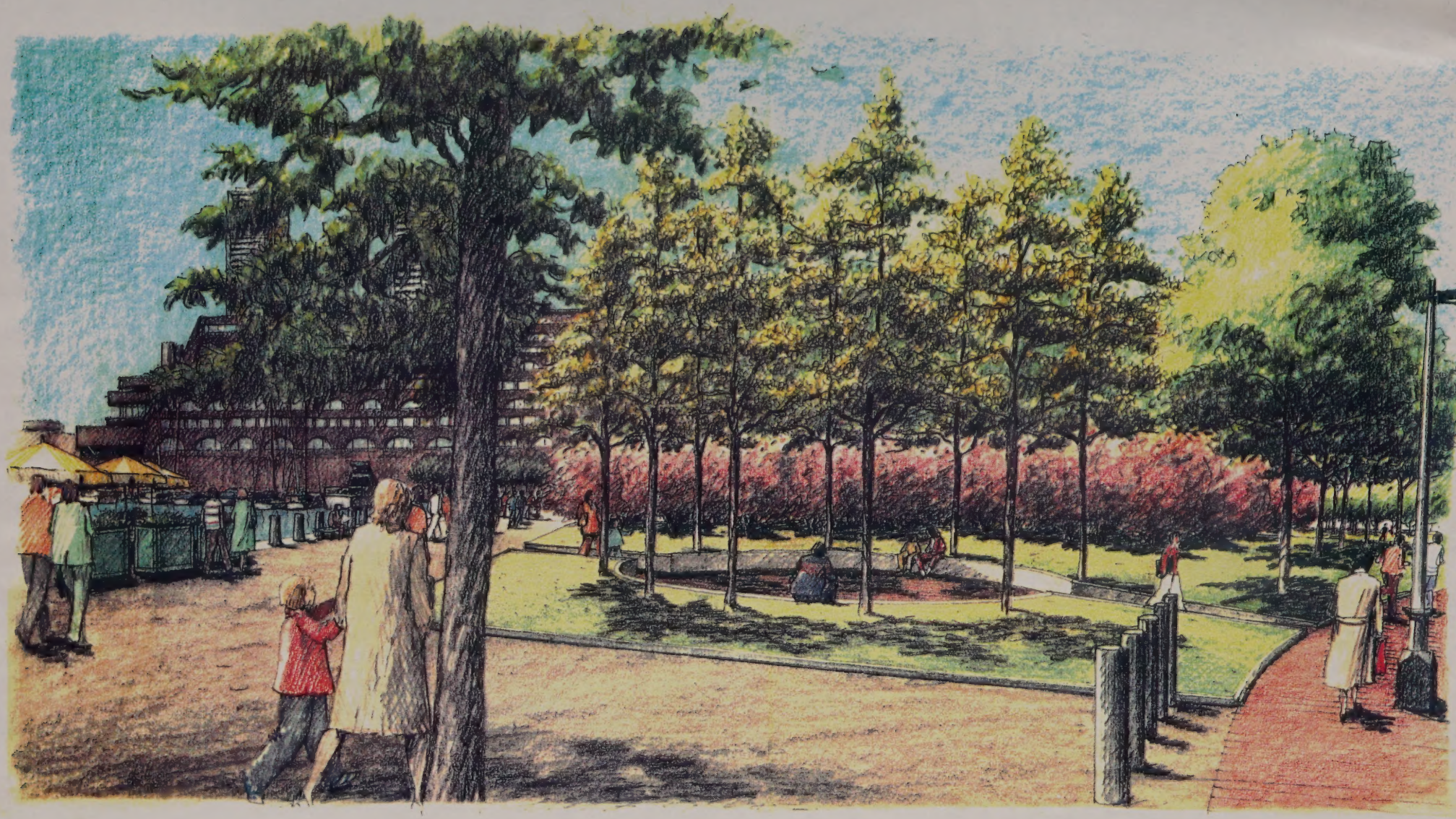
It is therefore recommended that the BRA authorize the Director to enter into a temporary License Agreement with the

Massachusetts Beirut Memorial Committee for use of the designated site at Waterfront Park during the term of construction.

A temporary License Agreement in the form to be executed is attached.

An appropriate vote follows:

VOTED: That the Director be authorized to execute and deliver a temporary License Agreement to the Massachusetts Beirut Memorial Committee for a portion of Waterfront Park during the construction of the memorial for a period not to exceed six (6) months. The License shall contain the usual requirements and such other terms and conditions as the Director and the Chief General Counsel deem proper and in the best interests of the BRA.



MASSACHUSETTS BEIRUT MEMORIAL